

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

STONEY FRANK STEWART, #K6687

PETITIONER

VERSUS

CIVIL ACTION NO. 4:07-cv-115-DPJ-JCS

MARGARETT A. BINGHAM, Superintendent

RESPONDENT

**ORDER OF TRANSFER PURSUANT
TO 28 U.S.C. § 1631**

This matter comes before this Court, *sua sponte*, for consideration of transfer. The Petitioner, an inmate of the Mississippi Department of Corrections, currently incarcerated in the Central Mississippi Correctional Facility, Leakesville, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254.

Petitioner states that he was convicted of burglary of a church in the Circuit Court of Lauderdale County, Mississippi, on April 3, 2001. The Petitioner was sentenced to serve a mandatory term of fourteen years in the custody of the Mississippi Department of Corrections. The Petitioner has previously filed for habeas relief in this Court challenging the same conviction, in *Stewart v. Kelly*, civil action number 4:04cv8TSL-LRA (S.D. Miss. Jan. 11, 2007). On January 11, 2007 Judge Tom S. Lee entered a Final Judgment [35] which dismissed the action, with prejudice.

A Petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate Court of Appeals for an order authorizing the District Court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). The Petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization

from the United States Court of Appeals for the Fifth Circuit to proceed with his cause in this Court. Therefore, this Court has determined that in the interest of justice, this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997). Accordingly,

IT IS HEREBY, ORDERED AND ADJUDGED that pursuant to 28 U.S.C. § 1631, this petition for habeas corpus relief is transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of this Court is directed to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED this the 25th day of September, 2007.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE